

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Robert M. Voelker,
Appellant,

v.

Cass County Board of Equalization,
Appellee.

Case No: 13C 219

Decision and Order Reversing the
Determination of the Cass
County Board of Equalization

GENERAL BACKGROUND & PROCEDURAL HISTORY

1. The Subject Property (Subject Property) is a 1.33 acre unimproved lot, with a legal description of: PLATTSMOUTH – PORTER PLACE LOT B SL2 OF LOT 25 (1.33).
2. The Cass County Assessor (the Assessor) assessed the Subject Property at \$64,125 for tax year 2013.
3. Robert M. Voelker (herein referred to as the “Taxpayer”) protested this value to the Cass County Board of Equalization (herein referred to as the “County Board”) and requested an assessed value of \$13,100 for tax year 2013.
4. The County Board determined that the taxable value of the Subject Property was \$28,968 for tax year 2013.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (herein referred to as the “Commission”).
6. A Single Commissioner hearing was held on July 8, 2014, at the Tax Equalization and Review Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Thomas D. Freimuth.
7. Robert M. Voelker appeared at the hearing.
8. Allen Sutcliffe, Cass County Assessor, appeared on his own behalf as a witness. Mr. Sutcliffe specifically expressed that he did not appear on behalf of the County Board.
9. No one was present for the County Board.

SUMMARY OF HEARING DOCUMENTS & STATEMENTS

10. The Taxpayer provided the Commission with an aerial photo of the Subject Property and surrounding properties. The Taxpayer asserted that he purchased the Subject Property and a contiguous parcel improved with a residence on July 1, 2013. The Taxpayer also asserted that he purchased the Subject Property to serve as open space and a buffer between the residence and nearby commercial and residential development.
11. Real Estate Transfer Statements, submitted at the hearing, confirm the date of sale of the Subject Property and the contiguous improved parcel and indicate that the Taxpayer paid \$13,100 for the Subject Property and \$120,000 for the contiguous parcel.
12. The Taxpayer asserted that the Subject Property should be valued at its purchase price of \$13,100.

13. The Taxpayer asserted that he has no plans to develop the Subject Property or use the Subject Property for any uses other than as open space associated with the contiguous improved parcel.
14. To further support his opinion of value, the Taxpayer provided MLS screenshots of three undeveloped parcels located in Cass County, Nebraska.
15. Comp 1 is located outside of Plattsmouth, Nebraska city limits, consists of 3.01 acres and sold on November 6, 2013, for \$41,000 or approximately \$13,620 per acre.
16. Comp 2 is located eight blocks away from the Subject Property, consists of 1.18 acres and sold in July 17, 2012, for \$20,000 or approximately \$16,950 per acre.
17. Comp 3 is located one mile from the Subject Property, consists of 1.4 acres, and sold on November 5, 2010, for \$20,000 or approximately \$14,285 per acre.
18. The Assessor offered a revised opinion of value for the Subject Property at \$23,840. The Assessor asserted that this revised opinion of value was based on a determination that his recommended value to the County Board, which was adopted by the County Board in its determination of the actual value of the Subject Property, was based on a determination that the Subject Property was a commercial parcel.
19. The Assessor also indicated that many of the commercial improvements located to the east of the Subject Property were vacant or distressed, and that the vibrant commercial development in the city was located closer to Highway 75. The Assessor asserted that even though the Subject Property is zoned for commercial use, it should be assessed as residential values.
20. The Assessor determined that the sale of the Subject Property in 2013, involved an arm's length transaction, but he asserted that the single sale did not set the market for the Subject Property.
21. The Assessor further asserted that the Taxpayer's comparable properties were not truly comparable to the Subject Property because: (1) Comp 1 was not comparable to the Subject Property because it was located outside of the Plattsmouth, Nebraska city limits and operated in a different market; and (2) Comp 2 and Comp 3 while located inside Plattsmouth, Nebraska city limits were located in neighborhoods with substantially more residential development and not contiguous to any commercial development.
22. No one was present for the County Board and no evidence or statements were submitted on behalf of the County Board.

STANDARD OF REVIEW

23. The Commission's review of the determination of the County Board of Equalization is de novo.¹ "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal."²
24. When considering an appeal a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon

¹ See, Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008).

² *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

sufficient competent evidence to justify its action.”³ That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”⁴

25. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
26. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶

GENERAL VALUATION LAW

27. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
28. The Commission’s Decision and Order shall include findings of fact and conclusions of law.⁸
29. “Actual value, market value, and fair market value mean exactly the same thing.”⁹
30. Taxable value is the percentage of actual value subject to taxation as directed by Nebraska Statutes section 77-201 and has the same meaning as assessed value.¹⁰
31. All real property in Nebraska subject to taxation shall be assessed as of January 1.¹¹
32. All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹²
33. Nebraska Statutes section 77-112 defines actual value as follows:

Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade. Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach. Actual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(8) (2012 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

⁸ Neb. Rev. Stat. §77-5018(1) (2012 Cum. Supp.).

⁹ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁰ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹² Neb. Rev. Stat. §77-201(1) (Reissue 2009).

used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹³

VALUATION ANALYSIS

34. The Taxpayer's assertion that the Subject Property was overvalued for tax year 2013 is supported by the Assessor's revised opinion of value.
35. The Commission finds that the Assessor's revised opinion of value, together with the submissions and statements in the hearing, constitutes clear and convincing evidence that the County Board's determination was unreasonable or arbitrary.
36. The Commission finds that the Taxpayer's comparable properties are not truly comparable to the Subject Property based on the Assessor's statements previously noted and a review of the other statements and documents submitted at the hearing. The Commission therefore finds that any attempt to utilize the Taxpayer's comparable properties to determine the actual value of the Subject Property would require adjustments to account for the Subject Property's superior characteristics.
37. The Commission further notes even if the Taxpayer's properties submitted for consideration are comparable, they indicate a range of sale prices between \$13,620 and \$16,950 per acre, and this would indicate a value for the Subject Property between \$18,114 (1.33 acres x \$13,620) to \$22,544 (1.33 acres x \$16,950).
38. The Commission finds that the evidence and statements submitted at the hearing do not support the Taxpayer's opinion of value.
39. The Commission finds that the Assessor's revised opinion of value constitutes the best evidence of the actual value of the Subject Property for tax year 2013.

CONCLUSION

40. The Taxpayer has produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
41. The Taxpayer has adduced sufficient, clear and convincing evidence that the determination of the County Board is unreasonable or arbitrary and the decision of the County Board should be vacated.

ORDER

IT IS ORDERED THAT:

1. The Decision of the Cass County Board of Equalization determining the taxable value of the Subject Property for tax year 2013 is Vacated and Reversed.
2. The taxable value of the Subject Property for tax year 2013 is \$23,840.
3. This Decision and Order, if no further action is taken, shall be certified to the Cass County Treasurer and the Cass County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2012 Cum. Supp.).

¹³ Neb. Rev. Stat. § 77-112 (Reissue 2009).

4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2013.
7. This Decision and Order is effective on October 8, 2014.

Signed and Sealed: October 8, 2014.

Thomas D. Freimuth, Commissioner